

OFFICE OF PERSONNEL MANAGEMENT  
Interagency Advisory Group  
1900 E Street, N.W.  
Washington, D.C. 20415

Minutes of the IAG Adverse Action Committee Meeting  
March 16, 1979

Wilma Lehman of OPM's Workforce Effectiveness and Development chaired the meeting. She informed the group of the oversight hearings to be held March 20 concerning OPM's implementation of the Civil Service Reform Act. Two members next told the group that they could recommend two persons with excellent qualifications as grievance examiners. For information, contact Chuck Thomas of Army, 695-9863, or Bob Buckbee of HUD, 755-5506. Elsie Fischer of WED thanked members' for their help in the adverse action training course over the past several years, and again asked for members' continued assistance in the new adverse action course. Cynthia Field of WED noted that the plan to evaluate the success of adverse action provisions in the CSRA has been approved. It includes a periodic check by OPM staff of MSPB decisions, arbitrator's awards, and negotiated grievances to see how the law and regulations are being interpreted in these cases and whether new requirements are being set by case law. OPM is able to obtain MSPB decisions and arbitrators' awards, but will have to depend on members to supply a continuing sample from next year on of negotiated grievance decisions which do not go to arbitration. A small group of members whom Mrs. Field spoke to earlier indicated such a sample would be useful for their own purposes also.

Draft Part 771

Mrs. Lehman asked for members' comments on this latest draft, made available to members before the meeting. This draft is an attempt to respond to members' concerns on two earlier drafts. Points made in the discussion are as follows:

- Members expressed pleasure with the latitude and agency discretion allowed by the draft. One member suggested that the word "informal" not be used in the draft at all lest its mere use connote any requirement for an informal stage in the grievance process, not otherwise required by the draft regulation.
- Members disagreed among themselves as to whether an impartial inquiry by an examiner was necessary:
  - o Could not the deciding official or one of his or her employees conduct a satisfactory inquiry? OPM's evaluations would show whether such a system was working well.

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- o On the contrary, without an impartial inquiry, an agency might well face problems in court.
  - o Each agency should decide whether an examiner was necessary for a particular type of case. Some minor grievances require no examiner for resolution.
  - o The deciding official should try to resolve the grievance and then let the employee decide whether an examiner was necessary.
  - o An examiner is required, since the grievance system is basically an employee system, not a management one, and must give validity to the employee's concern.
  - o The administrative grievance system is not an employee system parallel to the EEO complaints system, but rather an agency system, to provide a formal communication system for management to be aware of employee concerns.
- On the subject of action and employee coverage, several members felt that agencies should be allowed to exclude some employees who would otherwise be covered, and conversely, to include some actions and individuals not otherwise covered.
  - Paragraph 771.301(b)(4), assuring the employee the right to communicate with the servicing personnel office, counselor of the agency, and a supervisor or management official of higher rank than the employee's immediate supervisor, in effect gives the employee rights he or she already has and does not really belong in Part 771. Even without this paragraph, nothing prohibits an employee from going to other officials aside from his/her immediate supervisor. Another disagreed, saying that the right to communicate should be spelled out.